

Joint Civil Local Rules

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TABLE OF CONTENTS

1	Introduction
2	LR 1.1 Scope and Construction
2	LR 1.2 Definitions
2	LR 3.1 Jury Divisions
3	LR 3.2 Assignment of Actions to Jury Division
4	LR 3.3 Place of Filing Pleadings and Other Papers
5	LR 3.4 Pro Se Habeas Corpus Petitions
5	LR 3.5 Pro Se Civil Rights Complaints
5	LR 4.1 Service of Process Through the Secretary of State
5	LR 4.2 Service of Summons by United States Marshal
5	LR 4.3 Preparation of Process
5	LR 5.1 Form of Pleadings
6	LR 5.2 Filing Discovery Material
6	LR 5.3 Pro Se Habeas Corpus Petitions
7	LR 5.4 Pro Se Civil Rights Actions
7	LR 5.5 Petitions or Complaints In Forma Pauperis
8	LR 5.6 Filing in Bankruptcy Cases

8	LR 5.7 Electronic Filing - Applicable in the Western District of Kentucky Only When Authorized by the Court
8	LR 7.1 Motions
10	LR 7.2 Motions Relating to Discovery
10	LR 7.3 Motions in Social Security Cases
10	LR 8.1 Residence Required to be Stated in Complaint or Other Initial Pleading
10	LR 8.2 Complaint Requirements in Social Security Cases
11	LR 9.1 Social Security Cases
12	LR 12.1 Time to Respond in Social Security Cases
12	LR 16.1 Exemptions from Federal Rule of Civil Procedure 16
12	LR 16.2 Alternative Dispute Resolution
13	LR 16.3 Exhibits
13	LR 26.1 Motions Relating to Discovery
13	LR 33.1 Repetition of Question Before Answer
13	LR 33.2 Filing Interrogatories and Answers to Interrogatories
13	LR 34.1 Repetition of Request Before Response
14	LR 34.2 Filing Requests for Production and Responses to Requests
14	LR 36.1 Repetition of Request Before Answer
14	LR 36.2 Filing Requests for Admission and Answers to Requests
14	LR 37.1 Motions Relating to Discovery
14	LR 39.1 Exhibits

14	LR 40.1 Assignment of Cases Among Judges and Calendaring
14	LR 41.1 Dismissal for Failure to Prosecute
15	LR 45.1 Service of Subpoenas by United States Marshal
15	LR 45.2 Preparation of Process
15	LR 47.1 Contact with Jurors
15	LR 47.2 Peremptory Jury Challenges
15	LR 47.3 Attorneys Not to Request any Person's Excuse from Jury Service
15	LR 54.1 Notice of Settlements
15	LR 54.2 Attorneys' Fees in Social Security Cases
16	LR 54.3 Time for Filing Bill of Costs
16	LR 54.4 Time for Filing Motion for Attorneys Fees and Nontaxable Expenses
16	LR 62.1 Bond Requirements
16	LR 64.1 Preparation of Process
16	LR 65.1.1 Bond and Surety Requirements
17	LR 72.1 Duties of United States Magistrate Judges
17	LR 73.1 Consent to Judgment by a Magistrate Judge
18	LR 77.1 Place of Filing Pleadings and Other Papers
18	LR 78.1 Hearings or Oral Arguments on Motions
18	LR 78.2 Oral Argument on Motions in Social Security Cases
18	LR 79.1 Original Pleadings
18	LR 79.2 Disposition of Exhibits

19	LR 81.1 Removal Cases
19	LR 83.1 Attorney Admission to Practice
19	LR 83.2 Permission to Practice in a Particular Case
20	LR 83.3 Attorney Discipline
21	LR 83.4 Local Counsel
21	LR 83.5 Appearance of Counsel
21	LR 83.6 Withdrawal of Attorney of Record
22	LR 83.7 Preparation of Process
22	LR 83.8 Writs of Habeas Corpus Ad Testificandum
23	LR 83.9 Courtroom Decorum
24	LR 83.10 Exhibits
24	LR 83.11 Social Security Cases
24	LR 83.12 Bankruptcy Matters
25	LR 83.13 Advance Payment of Fees
25	LR 83.14 Modification or Amendment of Local Rules
26	LR 85.1 Citation
26	LR 86.1 Effective Date

INTRODUCTION

In 1996, the United States District Courts for the Eastern District and Western District of Kentucky initiated a renumbering project for the Joint Local Rules for the Eastern and Western Districts of Kentucky. This renumbering project represents the first major revamping of the Joint Local Rules for the Eastern and Western Districts since their original promulgation in 1986. The Eastern and Western Districts of Kentucky have for the past ten years cooperated together in promulgating local rules in such a fashion as to maintain uniformity in local federal court practice between the Eastern and Western Districts of Kentucky. No federal statute mandates such uniformity, but it has long been the intent of the federal judges in Kentucky to make the practice of law in the federal courts as simple and understandable as possible for the Kentucky federal practitioner.

The members of the 1996 Joint Local Rules Commission who participated in the renumbering and editing process are as follows:

Douglas L. McSwain, Esq., Chairman, Lexington, Kentucky
Honorable William O. Bertelsman, Chief Judge, Eastern District of Kentucky
Honorable Charles R. Simpson, III, Chief Judge, Western District of Kentucky
Honorable Henry R. Wilhoit, Jr., Judge, Eastern District of Kentucky
Honorable Thomas B. Russell, Judge, Western District of Kentucky
Frank P. Doheny, Jr., Esq., Louisville, Kentucky
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Edwin J. Walbourn, III, Esq., Covington, Kentucky
Allen W. Holbrook, Esq., Owensboro, Kentucky
James R. Lesousky, Esq., Louisville, Kentucky
Leslie Whitmer, ex officio, Clerk, Eastern District of Kentucky
Jeffrey Apperson, ex officio, Clerk, Western District of Kentucky

In addition to the members of the Joint Local Rules Commission, the following persons also assisted substantially in the preparation of the renumbered local rules:

Scott Wendelsdorf, Federal Public Defender for the Western District of Kentucky
Karla Hall, Chief Law Clerk to the Honorable William O. Bertelsman

The Commission wishes to express its sincere appreciation to both these individuals for their dedicated work toward the completion of this project.

The Judges of the Eastern and Western Districts of Kentucky are grateful to the many lawyers who have worked on the Joint Local Rules Commission and for their ongoing efforts in the review of the Local Rules of Court. The invaluable contribution of these lawyers has made for the success of the Joint Local Rules Project between the Eastern and Western Districts.

Comments and suggestions for the improvements of the Local Rules should be directed to a Clerk of Court for the attention of the Joint Local Rules Commission.

August 1, 1997

JOINT LOCAL RULES OF CIVIL PRACTICE

LR 1.1 Scope and Construction

These Joint Local Rules of Civil Practice for the United States District Courts for the Eastern District of Kentucky and the Western District of Kentucky provide standardized procedures for the convenience of the bench and bar. These rules must be construed to be consistent with the Federal Rules of Civil Procedure and to secure the just, efficient and economical determination of civil actions. These rules do not eliminate the statutory distinction between the United States District Courts for the Eastern and Western Districts of Kentucky.

LR 1.2 Definitions

References to "Court" or the "Clerk" mean the United States District Court for the Eastern District of Kentucky -- or the Clerk of that Court -- or the United States District Court for the Western District of Kentucky -- or the Clerk of that Court.

LR 3.1 Jury Divisions

(a) **United States District Court for the Eastern District of Kentucky.** The United States District Court for the Eastern District of Kentucky is divided into the following jury divisions:

- (1) **Ashland.** The following counties are in the Ashland Division:
Boyd, Carter, Elliott, Greenup, Lawrence, Lewis, Morgan, and Rowan.
- (2) **Covington.** The following counties are in the Covington Division:
Boone, Bracken, Campbell, Gallatin, Grant, Kenton, Mason, Pendleton, and Robertson.
- (3) **Frankfort.** The following counties are in the Frankfort Division:
Anderson, Carroll, Franklin, Henry, Owen, Shelby, and Trimble.
- (4) **Lexington.** The following counties are in the Lexington Division:
Bath, Bourbon, Boyle, Clark, Estill, Fayette, Fleming, Garrard, Harrison, Jessamine, Lee, Lincoln, Madison, Menifee, Mercer, Montgomery, Nicholas, Powell, Scott,

Wolfe, and Woodford.

(5) **London.** The following counties are in the London Division:

Bell, Clay, Harlan, Jackson, Knox, Laurel, Leslie, McCreary, Owsley, Pulaski, Rockcastle, Wayne, and Whitley.

(6) **Pikeville.** The following counties are in the Pikeville Division:

Breathitt, Floyd, Johnson, Knott, Letcher, Magoffin, Martin, Perry, and Pike.

(b) **United States District Court for the Western District of Kentucky.** The United States District Court for the Western District of Kentucky is divided into the following jury divisions:

(1) **Louisville.** The following counties are in the Louisville Division:

Breckinridge, Bullitt, Hardin, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Spencer, and Washington.

(2) **Bowling Green.** The following counties are in the Bowling Green Division:

Adair, Allen, Barren, Butler, Casey, Clinton, Cumberland, Edmonson, Green, Hart, Logan, Metcalf, Monroe, Russell, Simpson, Taylor, Todd, and Warren.

(3) **Owensboro.** The following counties are in the Owensboro Division:

Daviess, Grayson, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Ohio, Union, and Webster.

(4) **Paducah.** The following counties are in the Paducah Division:

Ballard, Caldwell, Calloway, Carlisle, Christian, Crittenden, Fulton, Graves, Hickman, Livingston, Lyon, McCracken, Marshall, and Trigg.

(c) **Assignment to a Division.** Jury division assignments may be changed by rule or by Court order.

LR 3.2 Assignment of Actions to Jury Division

(a) **Generally.** Civil actions will be assigned to particular jury divisions in accordance with the following provisions. If the Clerk improperly assigns a case to a particular jury division, the case will be transferred to the correct jury division. The validity of the filing is not affected by the Clerk's improper assignment.

(1) **Resident Defendants in Same Division.** If all defendants reside in the same jury division of the Court, the case is assigned to the jury division in which the defendants reside.

(2) **Defendants in Different Divisions.** If at least one defendant resides in the district but the defendants do not all reside in the same jury division, the case is assigned as follows:

(A) To the jury division in which a substantial part of the events or omissions giving rise to the claim occurred -- or a substantial part of property that is the subject of the action is situated; or

(B) If no jury division satisfies (A), to the jury division in which the first named

resident defendant resides.

(3) **Non-Resident Defendants.** If none of the defendants reside in the district, the case is assigned as follows:

(A) To the jury division in which a substantial part of the events or omissions giving rise to the claim occurred -- or a substantial part of property that is the subject of the action is situated; or

(B) If no jury division satisfies (A), to the jury division in which the first named plaintiff resides.

(b) **Removal Cases and 28 U.S.C. § 2254 Petitions.** A removal or state habeas corpus petition shall be assigned to the jury division that includes the court from which the removal is had or in which the challenged judgment, conviction or order was rendered.

(c) **Venue for Corporations.** A corporation is a resident of the county in which it has its principal place of business within the district. If a corporation does business throughout the district and has no operation which is its principal place of business, the action is assigned to the jury division in which a substantial part of the events or omissions giving rise to the claim occurred -- or a substantial part of property that is the subject of the action is situated. If a non-resident corporation does not maintain a place of business within the district, the action is assigned to the jury division in which a substantial part of the events or omissions giving rise to the claim occurred -- or a substantial part of property that is the subject of the action is situated.

(d) **Governmental Venue.** For purposes of this rule, the United States, federal agencies, the Commonwealth of Kentucky, and agencies of the Commonwealth are deemed non-residents of the District. State or federal officials joined solely in their official capacities are deemed residents of the division in which they perform their official duties.

(e) **Transfer.** Any civil action or proceeding may, in the discretion of the Court, be transferred from the jury division in which it is pending to any other division for the convenience of the Court, parties, witnesses, or in the interest of justice.

LR 3.3 Place of Filing Pleadings and Other Papers

Pleadings, motions and other papers ("pleadings") may be filed in any of the divisional offices of the Clerk for the district in which the action is filed or pending. The Clerk must affix to pleadings which are filed or tendered for filing the official filing stamp showing the Court, the date, and the location of the Clerk's office. If the pleading is filed in the division where the action is pending, the Clerk must enter the pleading on the docket. If the pleading is filed in a division where the action is not pending, the Clerk must accept the filing and forward it to the divisional office where the case is pending for entry on the docket.

LR 3.4 Pro Se Habeas Corpus Petitions

For information concerning filing pro se habeas corpus petitions, see LR 5.3.

LR 3.5 Pro Se Civil Rights Complaints

For information concerning filing pro se civil rights complaints, see LR 5.4.

LR 4.1 Service of Process Through the Secretary of State

The Secretary of State's Office will accept service of a summons and complaint only if it is served by certified mail, return receipt requested, in an envelope bearing the Clerk's return address. Accordingly, anyone preparing process for service through the Secretary of State must provide the Clerk with the following:

- (a) an envelope to mail the summons and complaint;
- (b) sufficient postage;
- (c) a return receipt provided by the postal service;
- (d) two copies of the summons;
- (e) two attested copies of the complaint;
- (f) the statutory fee for each defendant to be served. Checks should be made payable to the Kentucky State Treasurer.

LR 4.2 Service of Summons by United States Marshal

(a) **Generally.** If service of a summons by the United States Marshal is permitted, a party must present the following to the U.S. Marshal at least seven working days before the compliance date specified in the summons:

- (1) a properly completed summons; and
- (2) a properly completed U.S. Marshal Form 285.

(b) **Service upon a Party in Custody.** If the party to be served is in state or federal custody, properly completed process must be presented to the U.S. Marshal at least thirty (30) working days before the compliance date specified in the summons.

LR 4.3 Preparation of Process

For information concerning preparation of process, see LR 73.1(b) and LR 83.7.

LR 5.1 Form of Pleadings

(a) **Name of Counsel.** All pleadings, motions and other papers must include the name,

address, and telephone number of the filing party's attorney(s) of record or -- if the party is not represented by counsel -- the filing party.

(b) **Paper Size.** All pleadings, motions and other papers filed with the Court must be filed on paper that is 8 ½" x 11".

LR 5.2 Filing Discovery Material

(a) **Certificate for Filing Discovery Material.** A party tendering a discovery request, response, disclosure under F.R.Civ.P. 26(a)(1) or (2), or deposition transcript ("discovery material") not otherwise required to be filed shall accompany such tendered discovery material with a certificate from the party or counsel that such material will be used in the proceeding, or has been ordered filed by the Court; and shall further certify that a copy of such Certificate for Filing has been served upon all parties or their counsel of record.

(b) **Custodian of Documents.** The party responsible for service of the discovery request, response or disclosure under F.R.Civ.P. 26(a)(1) or (2), is the custodian and must retain the original document. The custodian must provide access to all parties of record during the pendency of the action.

LR 5.3 Pro Se Habeas Corpus Petitions

(a) **Generally.** The following papers should be written on court-supplied forms, signed and verified:

- (1) Pro se writs of habeas corpus filed under 28 U.S.C. § 2254; and
- (2) Pro se motions attacking a conviction or sentence filed under 28 U.S.C. § 2255.

(b) **Papers Not on Court-Supplied Forms.** If a pro se litigant submits a paper identified in (a) that is not on a court-supplied form, the Clerk will accept the paper for filing and forward it to an appropriate judicial officer for review. If directed by the appropriate judicial officer, the Clerk shall provide sufficient copies of the prescribed form, and instructions for preparing the form, to the pro se litigant along with directions to file the petition on the appropriate court-supplied form within thirty (30) days thereafter. When required to do so, a pro se litigant's failure to file his or her petition on a court-supplied form within thirty (30) days may be grounds for dismissal.

(c) **Assignment of Actions.** The Clerk will -- when possible -- assign 28 U.S.C. § 2255 motions to the judge who presided at the movant's trial or imposed the movant's sentence. If the judge who imposed sentence was not the trial judge, the Clerk will assign the § 2255 motion to the judge who presided over the part of the proceedings under attack. Petitions or motions addressed to an individual judge will be directed to the Clerk for assignment under these rules.

(d) **Current Mailing Address.** All pro se litigants must provide written notice of a change of address to the Clerk and to the opposing party or the opposing party's counsel. Failure to notify the Clerk of an address change may result in the dismissal of the litigant's case or other appropriate sanctions.

LR 5.4 Pro Se Civil Rights Actions

(a) **Generally.** The following papers should be written on court-supplied forms and signed:

- (1) Pro se civil rights complaints filed under 42 U.S.C. § 1983; and
- (2) Pro se civil rights complaints filed under the authority of Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).

(b) **Papers Not on Court-Supplied Forms.** If a pro se litigant submits a paper identified in (a) that is not on a court-supplied form, the Clerk will accept the paper for filing and forward it to an appropriate judicial officer for review. If directed by the appropriate judicial officer, the Clerk shall provide sufficient copies of the prescribed form, and instructions for preparing the form, to the pro se litigant along with directions to file the petition on the appropriate court-supplied form within thirty (30) days thereafter. When required to do so, a pro se litigant's failure to file his or her paper on a court-supplied form within thirty (30) days may be grounds for dismissal.

(c) **Filing.** Pleadings, motions or other papers in pro se civil rights cases must be addressed to the Clerk. A pleading, motion, or other paper addressed to an individual judge will be directed to the Clerk for assignment.

(d) **Current Mailing Address.** All pro se litigants must provide written notice of a change of address to the Clerk and to the opposing party or the opposing party's counsel. Failure to notify the Clerk of an address change may result in the dismissal of the litigant's case or other appropriate sanctions.

LR 5.5 Petitions or Complaints In Forma Pauperis

(a) **Prisoners**

(1) **Habeas Corpus Petitions.** A prisoner seeking leave to proceed in forma pauperis in a habeas corpus action must file a fully completed Application to Proceed Without Prepayment of Fees or a motion and affidavit that includes the same information. An application form may be obtained from the Clerk. No filing fee is required for motions filed under 28 U.S.C. § 2255.

(2) **Civil Rights Actions and All Other Civil Complaints.** Prisoners seeking leave to proceed without prepayment of the entire filing fee must comply with the requirements of the Prison Litigation Reform Act, 28 U.S.C. § 1915(a)(2) (1996).

(b) **Non-Prisoners.** A non-prisoner seeking leave to proceed in forma pauperis in a civil action must file a fully completed Application to Proceed Without Prepayment of Fees or a motion and affidavit that includes the same information. An application form may be obtained from the Clerk. The Court may order production of additional documents as necessary.

LR 5.6 Filing in Bankruptcy Cases

For information concerning filing in bankruptcy cases, see LR 83.12.

LR 5.7 Electronic Filing - Applicable in the Western District of Kentucky Only When Authorized by the Court

(a) **Electronic Filing Permitted.** When authorized by the Court, any pleading, motion or other paper permitted or required to be filed by the Federal Rules of Civil Procedure or these rules may be filed electronically.

(b) **Procedure for Electronic Filing.** To file a pleading, motion or other paper electronically, a person must:

- (1) Establish an account for payment of filing and administrative fees under procedures promulgated by the Clerk. This account must be established prior to any electronic transmission;
- (2) Transmit the pleading, motion or other paper to the Clerk in the form of digital electronic signals -- other than facsimile transmission -- in accordance with the procedures promulgated by the Clerk for such transmission; and
- (3) Maintain an original of the electronically transmitted pleading, motion or other paper. The original must comply with federal and local rules -- if any -- for signing of pleadings, motions, and other papers.

(c) **Time of Filing.** A paper filed under (b) will be deemed filed on the date the transmission is received by the Clerk.

(d) **Electronic Filing Accepted in Lieu of Original.** The Clerk will file and docket a paper filed under (b) in lieu of the original paper.

(e) **Acknowledgment of Filing.** Upon receipt of a filed under (b), the Clerk will electronically transmit to the filer an acknowledgment indicating the date of receipt of the paper.

LR 7.1 Motions

(a) **Generally.** All motions must state precisely the relief requested. Except for routine motions -- such as motions for an extension of time -- each motion must be accompanied by a

supporting memorandum. Failure to file a supporting memorandum may be grounds for denying the motion.

(b) **Motions for an Extension of Time.** Subject to any deadlines established by the Court, parties may extend time limits by agreed order. If the parties are unable to agree to an extension, the party seeking the extension must file a motion setting forth the reasons the extension is sought and tender an order granting the extension. A memorandum opposing the motion must be filed within five (5) days of service of the motion.

(c) **Time for Filing Responses and Replies**

(1) **Opposing Memorandum.** An opposing memorandum must be filed within fifteen (15) days of service of the motion. Unless the stipulation would extend the time beyond a deadline established by the Court, the parties may -- by written stipulation filed with the Court -- extend the response time by up to thirty (30) days. Failure to file an opposing memorandum may be grounds for granting the motion.

(2) **Reply Memorandum.** A party may choose to file a reply memorandum. A reply memorandum must be limited to matters newly raised in the opposing memorandum. If a party chooses to file a reply, the memorandum must be filed within eleven (11) days of service of the opposing memorandum. Unless the stipulation would extend the time beyond a deadline established by the Court, the parties may -- by written stipulation filed with the Court -- extend the reply time by up to five (5) days.

(d) **Limitations on Memoranda.** Memoranda pertaining to motions are limited to a supporting memorandum, an opposing memorandum, and a reply memorandum. Supporting and opposing memoranda must not exceed forty (40) pages without leave of Court. Reply memoranda must not exceed fifteen (15) pages without leave of Court. Supporting and opposing memoranda which exceed fifteen (15) pages must contain the following:

- (1) an introduction;
- (2) a statement (or counterstatement) of points and authorities;
- (3) a statement (or counterstatement) of the case;
- (4) an argument; and
- (5) a conclusion.

(e) **Proposed Order.** Each motion and response must be accompanied by a separate proposed order granting the relief requested or denying the motion. Any proposed order imposing sanctions must be provided separately from a proposed order pertaining to any other matter.

(f) **Form of Memoranda.** All memoranda must comply with LR 5.1.

(g) **Hearings or Oral Arguments on Motions.** A party may request a hearing or oral

argument on a motion. Such requests must be contained in the underlying motion, opposing memorandum, or reply memorandum and must set forth the reasons the hearing or argument may assist the Court in ruling on the motion. If no such request is made -- or is made but not granted -- the motion will be submitted to the Court for decision after the reply memorandum is filed or the time for filing the reply memorandum has expired.

(h) **Citation Form.** Citations in motions and memoranda must be in a generally accepted citation form.

(i) **Copies of Memoranda.** Parties must file with the Clerk the original and one copy of each memorandum.

(j) **Copies of Cases and Statutes.** If a motion or memoranda contains a citation to a case not reported in United States Supreme Court Decisions, Federal Reporter, Federal Reporter 2d, Federal Reporter 3d, Federal Supplement, Federal Rules Decisions, Kentucky Reports, or Kentucky Decisions, a copy of that case must be attached. If a motion or memoranda contains a citation to a statute other than a Kentucky or federal statute, a copy of the statute must be attached.

LR 7.2 Motions Relating to Discovery

For information concerning discovery motions, see LR 37.1.

LR 7.3 Motions in Social Security Cases

For information concerning motions in social security cases, see LR 9.1(c).

LR 8.1 Residence Required to be Stated in Complaint or Other Initial Pleading

To assist the Clerk in assigning the action to the appropriate jury division under LR 3.2, a party commencing a civil action must include in the complaint or other initial pleading the following information:

- (a) the defendant's or defendants' county of residence;
- (b) the plaintiff's or plaintiffs' county of residence; or
- (c) if located in Kentucky, the jury division in which a substantial part of the events or omissions giving rise to the claim occurred -- or a substantial part of property that is the subject of the action is situated.

LR 8.2 Complaint Requirements in Social Security Cases

For information concerning complaint requirements in social security cases, see

LR 9.1(a).

LR 9.1 Social Security Cases

(a) **Complaint Requirements.** In addition to the requirement of Federal Rule of Civil Procedure 8(a), social security complaints must contain the following:

- (1) If the case involves retirement, survivor, disability or health insurance benefits claims, the social security number of the worker on whose wage record the benefits application was filed; or
- (2) If the case involves supplemental security income benefits claims, the plaintiff's social security number.

(b) **Secretary's Time to Respond.** Within sixty (60) days of the complaint's filing, the Secretary of the Department of Health and Human Services must file an answer and transcript of the administrative proceedings. If the responsible Social Security Administration official files an affidavit detailing the circumstances that require additional time, an extension of time to respond may be granted. No other extensions will be granted.

(c) **Judicial Review.** At the discretion of the judge to whom the case is assigned, judicial review may be on written motion or oral argument.

(1) **Motion Practice**

(A) Plaintiff must move for summary judgment or judgment on the pleadings within sixty (60) days of the filing of the answer and administrative transcript.

(B) The Secretary must file a countermotion or a response to the plaintiff's motion within ninety (90) days of the filing of the answer and administrative transcript.

(C) The Clerk must submit the case to the judicial officer ninety (90) days after the filing of the answer and administrative transcript.

(D) Extensions of time may be granted only if good cause is shown.

(2) **Oral Argument Practice**

(A) Plaintiff must file a brief statement of specific errors upon which plaintiff relies for reversal within thirty (30) days of the filing of the answer and administrative transcript.

(B) The case must be assigned for oral argument within thirty (30) days of plaintiff's filing in (A). At oral argument, each side has fifteen (15) minutes to present its position. The presiding judicial officer may allow additional time for good cause shown. Counsel must cite authority to support their arguments and provide references to the administrative record to support their statements of fact.

(C) The matter is submitted for decision upon completion of oral arguments.

(d) **Attorneys' Fees.** Plaintiff's counsel may petition for attorneys' fees within thirty (30) days of a final, favorable decision for plaintiff.

(1) **Petition.** The attorneys' fee petition must include an itemization of the services provided in both the administrative and the judicial proceedings. Plaintiff's counsel must serve a copy of the fee petition on the claimant and the United States Attorney.

(2) **Response by the Claimant.** The claimant may respond to the attorneys' fee petition within thirty (30) days of the petition's filing.

(3) **Response by the Government.** The United States Attorney must respond to the attorneys' fee petition within thirty (30) days of the petition's filing. The government's response must include a statement of accrued benefits and must advise the Court whether the government considers the fee to be reasonable. The government must serve a copy of the response on the claimant and the petitioning attorney.

(4) **Submission.** The Clerk must submit the petition for decision thirty (30) days after the petition is filed.

(5) **Hearings.** Evidentiary hearings on the fee petition are not permitted unless extraordinary circumstances warrant a hearing. If the appropriate judicial officer determines that extraordinary circumstances exist, the United States Attorney may contact the claimant for information and assistance regarding disputed matters. To prepare for the hearing, the parties are entitled to full discovery.

LR 12.1 Time to Respond in Social Security Cases

For information concerning response times in social security cases, see LR 9.1.

LR 16.1 Exemptions from Federal Rule of Civil Procedure 16.

The following are exempt from the requirements of Federal Rule of Civil Procedure 16(b):

- (a) an action for review on an administrative record;
- (b) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence;
- (c) an action brought without counsel by a person in custody of the United States, a state, or state subdivision;
- (d) an action to enforce or quash an administrative summons or subpoena;
- (e) an action by the United States to recover benefit payments;
- (f) an action by the United States to collect on a student loan guaranteed by the United States;
- (g) a proceeding ancillary to proceedings in other courts; and
- (h) an action to enforce an arbitration award.

LR 16.2 Alternative Dispute Resolution.

In accordance with the Alternative Dispute Resolution Act of 1998, P.L. 105-315, the use of alternative dispute resolution processes in all civil actions, including bankruptcy actions, is authorized, unless otherwise ordered by a judicial officer in any particular case. As required by that Act, parties in all civil cases must consider the use of an alternative dispute resolution process at an appropriate stage in the court proceedings. The Court provides parties in all civil cases with the option of mediation conducted under the auspices of a private professional mediator or a judicial officer. Mediation may be considered during a pretrial, scheduling, or planning conference conducted pursuant to Fed.R.Civ. P. 16, or at such other time during court proceedings as determined by a judicial officer. Mediation conducted pursuant to this rule shall be confidential. Positions taken and statements or concessions made during the mediation process shall not be admissible as evidence during any court proceedings based solely upon their use by a party during the mediation process. The mediator shall not be called or listed as a witness to any matter in which such mediator shall have served. Each District Court will, by separate General Order, designate a person to implement, administer, oversee, and evaluate alternative dispute resolution in such District. Upon motion of any party or sua sponte, any judicial officer may require parties in civil cases to consider consenting to the use of any form of alternative dispute resolution process, including, but not limited to, mediation, early neutral evaluation, minitrial, or arbitration.

LR 16.3 Exhibits

For information concerning exhibits, see LR 83.10.

LR 26.1 Motions Relating to Discovery

For information concerning discovery motions, see LR 37.1.

LR 33.1 Repetition of Question Before Answer

In answering interrogatories -- or in filing objections to interrogatories -- the replying party must repeat the question immediately before the answer or objection.

LR 33.2 Filing Interrogatories and Answers to Interrogatories

For information concerning filing interrogatories and answers thereto, see LR 5.2.

LR 34.1 Repetition of Request Before Response

In responding to requests for production of documents or things or for entry upon land -- or in filing objections to such requests -- the replying party must repeat the request immediately before the response or objection.

LR 34.2 Filing Requests for Production and Responses to Requests

For information concerning filing requests for production or inspection and responses thereto, see LR 5.2.

LR 36.1 Repetition of Request Before Answer

In answering requests for admission -- or in filing objections to such requests -- the replying party must repeat the request immediately before the answer or objection.

LR 36.2 Filing Requests for Admission and Answers to Requests

For information concerning filing requests for admission and answers thereto, see LR 5.2.

LR 37.1 Motions Relating to Discovery

Prior to filing a discovery motion, all counsel must make a good faith effort to resolve extrajudicially any dispute relating to discovery. The Court will not entertain discovery motions unless counsel have conferred -- or attempted to confer -- with other affected parties in an effort to resolve their dispute. The moving party must attach to every discovery motion a certification that counsel have conferred and are unable to resolve their differences. The certification must detail counsel's attempts to resolve the dispute.

LR 39.1 Exhibits

For information concerning exhibits and the disposition of exhibits after trial, see LR 83.10 and LR 79.2.

LR 40.1 Assignment of Cases Among Judges and Calendaring

(a) **Assignment of Cases Among Judges.** Cases are assigned among the various judges within a district in a manner established by the Court's general order. Unless otherwise ordered, cases are calendared for trial or other appropriate proceedings by the assigned judge.

(b) **Judge Not Available.** If it appears that any matter demands immediate attention and the judge to whom the case has been assigned is not or will not be available, the Clerk -- upon request -- must determine if another judge is available who will consent to hear the matter.

LR 41.1 Dismissal for Failure to Prosecute

If the Clerk determines that no action has been taken on a case for one year, the Clerk will

issue an order requiring the plaintiff to show cause why the case should not be dismissed for lack of prosecution.

LR 45.1 Service of Subpoenas by United States Marshal

If service of a subpoena by the United States Marshal is permitted, a party must present the following to the U.S. Marshal Service at least seven working days before the compliance date specified in the subpoena:

- (1) a properly completed subpoena;
- (2) a properly completed U.S. Marshal Form 285; and
- (3) attendance fees and mileage to be tendered to the person to whom the subpoena is directed.

LR 45.2 Preparation of Process

For information concerning preparation of process, see LR 83.7.

LR 47.1 Contact with Jurors

Unless permitted by the Court, no party or attorney -- or the representative of a party or attorney -- may contact, interview, or communicate with any juror before, during, or after trial. No person may contact, interview, or communicate with a juror on any matter relating to the trial before or during the trial.

LR 47.2 Peremptory Jury Challenges

Unless the Court orders otherwise, the parties must exercise their peremptory challenges simultaneously.

LR 47.3 Attorneys Not to Request any Person's Excuse from Jury Service

No attorney -- or an employee of an attorney or law firm -- may request a judge to excuse any person lawfully summoned for jury service. Any person violating this rule is subject to punishment for contempt.

LR 54.1 Notice of Settlements

If parties settle a civil action, the parties' counsel must promptly notify the Clerk. Failure to give prompt notice may be grounds for assessing any jury costs against one or more of the parties or their counsel.

LR 54.2 Attorneys' Fees in Social Security Cases

For information concerning attorneys' fees in social security cases, see LR 9.1(d).

LR 54.3 Time for Filing Bill of Costs

The prevailing party must file a Bill of Costs with the Clerk and serve a copy of the Bill on each adverse party within(30) days of entry of judgement. If the Bill of Costs is not filed within thirty(30) days, costs other than those of the Clerk, taxable pursuant to 28 U.S.C. § 1920, shall be waived. The Court may, on motion filed within the time for the filing of the Bill of Costs, extend the time for filing.

LR 54.4 Time for Filing Motion for Attorney Fees and Nontaxable Expenses

Claims for attorneys fees and related nontaxable expenses, not awardable as an element of damages pursuant to the substantive law governing the action, must be made by motion in accordance with F.R.Civ P. 54(d)(2), except that the time for filing and serving such motion shall be no later than thirty(30) days after entry of judgement. If a motion for attorney fees or nontaxable expenses is not filed within thirty(30) days, such fees and cost shall be waived. The Court may, on motion filed within the time provided for filing a motion for attorneys fees or nontaxable expenses, extend the time for filing any motion for fees or expenses.

LR 62.1 Bond Requirements

For information concerning bond and surety requirements, see LR 65.1.1.

LR 64.1 Preparation of Process

For information concerning preparation of process, see LR 83.7.

LR 65.1.1 Bond and Surety Requirements

(a) **General Requirements.** In all civil and bankruptcy actions, the Clerk may -- unless the Court orders otherwise -- accept only the following as surety on a bond:

- (1) a surety company approved by the United States Department of Treasury;
- (2) cash in an amount set by the Court; or
- (3) a personal surety secured by real estate that complies with (d), (e), (f), and (g).

(b) **Powers of Attorney.** A Treasury Department-approved surety company may designate an agent in Kentucky to execute bonds. If so, the power of attorney designating the agent may be on file with the Clerk in the jury division in which the action is pending. In lieu of filing the power of attorney with the Clerk, a copy of the power of attorney must be appended to each bond executed.

(c) **Unacceptable Personal Sureties.** The Clerk must not accept the following as a personal surety on any bond:

- (1) an attorney;
- (2) a Court officer or employee; or
- (3) the United States Marshal or any deputy marshal.

(d) **Personal Surety Secured by Real Estate; Generally.** The Clerk must accept a personal surety secured by real estate under the following conditions:

- (1) The real estate is located in Kentucky;
- (2) The real estate has an unencumbered value of at least 110% of the bond amount;
- (3) The real estate is not owned by a corporation or partnership; and
- (4) If the property is held jointly, all joint tenants have executed the bond.

(e) **Procedure for Posting Real Estate Bond.** To post a real estate bond, the sureties must execute an affidavit providing the following information:

- (1) the owners' name and address;
- (2) affiant's statement as to the assessed value from the Property Valuation Administrator's Office or -- if not available -- an appraisal by a licensed appraiser; and
- (3) a listing of all liens and mortgages on the property, including all but the current year's real estate taxes.

(f) **Affidavit on Appearance Bonds.** On appearance bonds, the affidavit required in (e) must be incorporated by reference in the Justification of Sureties portion of the Appearance Bond Form.

(g) **Bond Execution and Deed Deposit.** All parties to the deed and the bond must execute the bond and take the oath. The deed -- or certified copy of the deed -- must be deposited with the Clerk. Upon receipt of the deed -- or certified copy of the deed -- the Clerk must provide a receipt to the owner. If the bond is not forfeited, the deed must be returned to the property owner in person or by certified mail at the conclusion of the case.

(h) **Lis Pendens Notice and Fees.** The Clerk must file a lis pendens notice against the property in the County Clerk's Office in the county where the property is located. The required fee for filing the notice and release of lis pendens is required upon execution of the bond.

LR 72.1 Duties of United States Magistrate Judges

(a) **All Magistrate Judges.** All magistrate judges may perform any of the duties authorized by 28 U.S.C. § 636(a), (b), and (c).

LR 73.1 Consent to Judgment by a Magistrate Judge

(a) **Generally.** If the parties consent, all full-time magistrate judges are designated within the meaning of 28 U.S.C. § 636(c)(1) to conduct all proceedings and to enter judgment in civil matters.

(b) **Duty of Plaintiff.** Upon filing an action, each plaintiff must obtain from the Clerk copies of notices setting forth the provisions of 28 U.S.C. § 636(c)(2). Each plaintiff must serve a copy of that notice with the summons and complaint on each defendant in the action.

(c) **Duty of Clerk.** If the parties file a stipulation that a magistrate judge may try an action, the Clerk will reassign the case from the judge's docket to the magistrate judge's docket.

LR 77.1 Place of Filing Pleadings and Other Papers

For information concerning the place of filing pleadings, motions and other papers, see LR 3.3.

LR 78.1 Hearings or Oral Arguments on Motions

For information concerning hearings or oral arguments on motions, see LR 7.1(g).

LR 78.2 Oral Argument on Motions in Social Security Cases

For information concerning oral arguments on motions in social security cases, see LR 9.1(c).

LR 79.1 Original Pleadings

Originals of pleadings, motions and other papers filed with the Court must not be withdrawn from Court files, unless ordered by the Court.

LR 79.2 Disposition of Exhibits

(a) **Generally.** The Clerk may direct counsel of record to retrieve their exhibits from the Clerk's custody either three (3) months after a final order is entered or -- if the case was appealed -- when the mandate is filed.

(b) **X-Rays, Hospital Records and Medical Reports.** The Clerk may deliver x-ray negatives, hospital records and medical reports to the witness through whom the exhibit was introduced in evidence.

(c) **Contraband.** If not claimed within two (2) weeks of final disposition, the Clerk may deliver all contraband filed as exhibits to the appropriate agency for disposition.

(d) **Destruction of Exhibits.** The Clerk may destroy any exhibits that remain unclaimed two weeks after counsel of record is asked to retrieve them.

LR 81.1 Removal Cases

For information concerning removal cases, see LR 3.2(b).

LR 83.1 Attorney Admission to Practice

(a) **Applicant Eligibility.** An attorney may apply for admission to the Bar of the Court if:

- (1) The attorney has been admitted to practice before the Supreme Court of Kentucky;
- (2) The attorney is in good standing with the Supreme Court of Kentucky; and
- (3) The attorney is of good moral and professional character.

(b) **Admission Procedure.** To be considered for admission to the bar, an applicant must provide the Clerk with the following:

- (1) an Application for Admission;
- (2) an Authorization and Release;
- (3) an affidavit of sponsorship signed by a member of the bar; and
- (4) the prescribed fee.

(c) **Admission.** After the Court grants the attorney's application, the applicant may be admitted by mail or by appointment in open court.

(1) **Admission by Mail.** Once the applicant notifies the Clerk of a desire to be admitted by mail, the Clerk will promptly mail a Certificate of Admission to the applicant.

(2) **Admission in Open Court.** Once the applicant notifies the Clerk of a desire to be admitted in open court, the Clerk will promptly arrange to have the matter set for hearing. At that hearing, the sponsor will move to admit the applicant to practice before the Court, and the attorney's oath or affirmation will be administered in open court.

LR 83.2 Permission to Practice in a Particular Case*

(a) **Procedure.** An attorney who has not been admitted to the Bar of the Court -- but who is in good standing in the Bar of any state, territory, or the District of Columbia -- may request permission to practice in a particular case by filing the following with the Clerk:

- (1) a motion for admission pro hac vice;

- (2) an affidavit identifying the Bar in which the attorney is a member in good standing;
- (3) the prescribed fee; and
- (4) a written consent to be subject to the jurisdiction and rules of the Kentucky Supreme Court governing professional conduct.

(b) **Sanctions.** Nothing in this rule detracts from the Court's power to sanction unprofessional conduct.

*The Attorney General or any other officer of the Department of Justice need not seek admission pro hac vice under this rule. See 28 U.S.C. §515(a).

LR 83.3 Attorney Discipline

(a) **Discipline Generally.** Any attorney practicing before the Court is subject to discipline by the Court upon a showing that:

- (1) The attorney has been subjected to public discipline in any other court of record; or
- (2) The attorney is guilty of unprofessional conduct.

(b) **Discipline in Another Court; Procedure.**

(1) **Attorney's Duty to Notify.** An attorney practicing before the Court who is subjected to public discipline in any other court of record must promptly inform the Clerk of that action.

(2) **Notice to the Attorney.** Upon filing a certified copy of a judgment or order demonstrating that another court has disciplined an attorney, the Court will immediately issue a notice to the attorney containing the following:

- (A) a copy of the judgment or order from the other court; and
- (B) an order to show cause -- within thirty (30) days after service of that order -- why the Court's imposition of the identical discipline would be unwarranted. The challenge to the Court's imposition of the identical sanction must be based on one of the grounds contained in (3). The attorney may respond to the show cause order personally or by mail.

(3) **Discipline Imposed; Grounds for Challenge.** Thirty (30) days after service of the notice provided in (b)(2), the Court will impose the identical discipline as that imposed by the other court unless the Court concludes that the entry of some other order is appropriate. To conclude that the entry of some other order is appropriate, the Court must find that the record underlying the other court's discipline clearly indicates that:

- (A) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (B) the proof establishing the misconduct was so infirm that the Court could not -- consistent with its duty -- accept the other court's conclusion as final;

(C) the Court's imposition of the same discipline would result in grave injustice;
or

(D) the Court concludes that the misconduct warrants substantially different discipline.

(4) **Finality of the Other Court's Action.** Unless the Court determines that one of the grounds contained in (3) exists, another court's final adjudication of attorney misconduct conclusively establishes the misconduct for purposes of this Court's discipline. If the discipline in the other court is stayed or is not a final decision, this Court's reciprocal discipline is deferred until the stay expires or the decision becomes final.

(c) **Discipline for Unprofessional and Improper Conduct.** If it appears to the Court that an attorney practicing before the Court has violated the rules of the Kentucky Supreme Court governing professional conduct or is guilty of other conduct unbecoming an officer of the Court, any judge may order an attorney to show cause -- within a specified time -- why the Court should not discipline the attorney. Upon the expiration of the period specified or upon the attorney's response to the show cause order, the Court will enter an appropriate order. If requested by the responding attorney, the Court will conduct a hearing prior to determining the appropriate order.

(d) **Discipline for Contempt.** Disbarment from the Court may be utilized as a sanction for contempt of court under the procedures contained in Federal Rule of Criminal Procedure 42. Nothing in this rule shall limit the Court's power to punish contempt.

LR 83.4 Local Counsel

If the law practice of an attorney practicing before the Court is not located in proximity to the place where court is held, the Court may -- in its discretion -- require the attorney to designate local counsel. To require local counsel, the Court must enter an order articulating the reasons local counsel is required.

LR 83.5 Appearance of Counsel

Unless the Court orders otherwise, an attorney is deemed an attorney of record by:

- (a) appearing in court on behalf of a party;
- (b) filing an entry of appearance;
- (c) signing a pleading, motion or other paper as attorney for a party; or
- (d) listing his or her name as an attorney -- other than of counsel -- on a pleading, motion, or other paper.

LR 83.6 Withdrawal of Attorney of Record

Unless a compelling reason exists, an attorney of record is not permitted to withdraw within twenty-one (21) days of trial or a hearing on any motion for judgment or dismissal. At any other time, an attorney of record may withdraw from a case only under the following circumstances:

- (a) The attorney files a written request, his or her client consents in writing, and another attorney enters his or her appearance; or
- (b) The attorney files a written request, notifies the client, makes a showing of good cause, and the Court consents to the withdrawal on whatever terms the Court chooses to impose.

LR 83.7 Preparation of Process

(a) **Generally.** Subject to current availability, the Clerk must make reasonable supplies of blank official process forms available to any attorney admitted to practice before the Court and any party appearing pro se. Any attorney -- or any party proceeding pro se -- who requests the issuance of process must prepare and present to the Clerk for signature and sealing all necessary forms, including the following:

- (1) Summons;
- (2) Warrants of Seizure and Monition;
- (3) Summons to Alleged Bankrupts;
- (4) Subpoenas to Witnesses;
- (5) Certificates of Judgment;
- (6) Writs of Execution;
- (7) Orders of Sale;
- (8) All Process in Garnishment or Other Aid in Execution;
- (9) Civil Cover Sheet;
- (10) U.S. Marshal's Form 285; and
- (11) Notice of Stipulation to Magistrate Judge's Jurisdiction.

(b) **Time for Completion.** The Clerk must accept for filing any pleading or document tendered even if it is not accompanied by the appropriate forms. If the pleading is not accompanied by the appropriate forms, the attorney or party filing the pleading must comply with this rule within three (3) working days of filing the pleading. If counsel or the party fails to comply with this order within three (3) working days of filing the pleading, the Court will issue an order requiring the party to show cause why the pleading should not be stricken.

LR 83.8 Writs of Habeas Corpus Ad Testificandum

If a person in state or federal custody is needed for testimony or for trial in a civil case, the party desiring the person's attendance must move for a writ of habeas corpus ad testificandum at least thirty (30) working days before the date the person is needed in court to appear or

testify unless exigent circumstances otherwise exist.

LR 83.9 Courtroom Decorum

(a) **Persons Permitted Inside the Bar of the Courtroom.** Unless the court orders otherwise, only the following persons are permitted inside the bar of the courtroom during proceedings held in open court:

(1) **Civil Litigation.** In connection with civil litigation, the following persons are permitted inside the bar of the courtroom:

- (A) the parties;
- (B) the witnesses -- when actually testifying;
- (C) any jurors;
- (D) attorneys duly admitted to practice before the Court;
- (E) paralegals working under the direction of attorneys duly admitted to practice before the Court;
- (F) the bailiffs;
- (G) United States Marshals; and
- (H) any other officers or employees of the Court.

(2) **Naturalization Proceedings.** During naturalization proceedings, the following persons are permitted inside the bar of the courtroom:

- (A) candidates for naturalization; and
- (B) any other person previously approved by the Court.

(3) **Other Ceremonial or Memorial Proceedings.** During other ceremonial or memorial proceedings, the following persons are permitted inside the bar of the courtroom:

- (A) the participants;
- (B) the participants' immediate families;
- (C) attorneys duly admitted to practice before the Court;
- (D) the bailiffs;
- (E) United States Marshals; and
- (F) any other officers or employees of the Court.

(b) **Possession and Use of Electronic or Photographic Equipment; Generally.** Except as permitted by (c), no person may operate or possess any tape recorders, radio or television broadcasting devices, or photographic equipment in any courtroom, hall, corridor or foyer of any building used for holding court. This rule applies regardless of whether court is actually in session.

(c) **Permitted Uses of Electronics.** The presiding judge may permit the following:

- (1) Use of electronic or photographic means for presenting evidence or perpetuating the record; and/or

(2) The broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.

(d) **Notice and Penalty.** Notice of (b) must be posted in a conspicuous place in all federal court buildings in Kentucky. Any person violating (b) is subject to punishment for contempt.

LR 83.10 Exhibits

Unless the Court orders otherwise, exhibits must be managed as follows:

(a) **Advance Marking.** All exhibits and materials to be used during a civil trial must be marked for identification purposes with labels obtained from the Clerk.

(b) **Method of Designation.** All exhibits must be marked as follows:

- (1) Joint exhibits (JX) must be numbered using white labels;
- (2) Plaintiff's exhibits (PX) must be numbered using pink labels;
- (3) Defendant's exhibits (DX) must be numbered using blue labels;
- (4) Third-party exhibits (TPX) must be numbered using green labels;
- (5) If the proceeding involves multiple plaintiffs or multiple defendants, the identification assigned to each exhibit must contain the individual party's surname or corporate name.

(c) **Uniform Designation.** Proposed exhibits must be uniformly identified during all phases of the case. This rule applies to all proposed exhibits, including exhibits appended to discovery requests or depositions and exhibits to be used at trial.

(d) **Exhibit Lists.** At the commencement of trial, each party's counsel must tender to the Court a list of all exhibits the party intends to use at trial. The list must contain the pre-marked number and a short description of each exhibit.

(e) **Judge's Copy.** Unless the Court orders otherwise, a copy of each written exhibit tendered during trial must be furnished to the judge at the time of filing with the court reporter or deputy clerk.

(f) **Disposition of Exhibits.** For information concerning disposition of exhibits, see LR 79.2.

LR 83.11 Social Security Cases

For information concerning social security cases, see LR 9.1.

LR 83.12 Bankruptcy Matters

(a) **Generally.** The powers of law, equity and admiralty vested in the District Court are referred to the United States Bankruptcy Court as a unit of the District Court. The following cases and proceedings are referred to the Bankruptcy Court judge for the District:

- (1) Cases, matters and proceedings in cases, under the Bankruptcy Act pending in the Bankruptcy Court on July 9, 1984;
- (2) All matters arising under -- or arising in or related to cases arising under -- Title 11 of the United States Code that were pending in the Bankruptcy Court on July 9, 1984, except proceedings involving tort claims for personal injury or wrongful death;
- (3) All matters arising under -- or arising in or related to cases arising under -- Title 11 of the United States Code filed on or after July 10, 1984, except proceedings involving tort claims for personal injury or wrongful death;
- (4) All actions for removal of claims under 28 U.S.C. § 1452(a) and (b) that relate to bankruptcy cases, except proceedings involving tort claims for personal injury or wrongful death;
- (5) All venue matters relating to bankruptcy cases under 28 U.S.C. §§ 1406 and 1412.

(b) **Filing.** All matters in (a) must be filed in accordance with the local rules of the United States Bankruptcy Court.

LR 83.13 Advance Payment of Fees

The Clerk, the United States Marshal Service, or any other officer of the Court entitled to collect fees for services rendered may require fees to be paid in advance. This rule includes fees for filing cases.

LR 83.14 Modification or Amendment of Local Rules

(a) **Modification in Particular Case.** A judge may modify any local rule in a case by entering a modifying order in that case.

(b) **Amendments to the Joint Local Rules.** The Courts may amend these rules by entering an appropriate order in each District under the procedures in Federal Rule of Civil Procedure 83. The Courts have agreed not to adopt an amendment to the Joint Local Rules of Civil or Criminal Practice until considered by the Joint Local Rules Commission.

(c) Joint Local Rules Commission Membership

(1) **Generally.** The Joint Local Rules Commission is comprised of the following members:

- (A) two judges from each District;
- (B) four practicing attorneys from each District;
- (C) a chairperson selected by -- and serving at the will of -- the Chief Judges of

the Districts.

(2) **Judge Members.** Judge members of the Commission must include the Chief Judges of the respective Districts -- or his or her designee -- and one other judge selected by the judges of each Court.

(3) **Attorney Members.** The Board of Governors of the Kentucky Bar Association must appoint the attorney members of the Commission. Attorney members must be selected from those attorneys currently practicing in the Eastern or Western District of Kentucky -- or in both Districts. The Board should select attorneys so as to maintain geographic representation for all Bar members in Kentucky.

(d) **Terms of Office for Attorney Members.** Attorney members of the Commission must be appointed for a four year period. The initial appointments must be staggered terms of one, two, three or four years to achieve continuity on the Commission. Commission members at the time this rule takes effect may be reappointed to the Commission in appropriately staggered terms to maintain continuity.

(e) **Meetings.** The Commission will meet bi-annually in a place convenient to as many members as possible. If no one identifies any agenda items to the chairperson prior to the scheduled meeting, the meeting may be canceled. A quorum consists of the following:

- (1) one judge from each District; and
- (2) two attorneys from each District.

LR 85.1 Citation

These rules may be known as the Joint Local Rules of Civil Practice, and cited as "LR ____."

LR 86.1 Effective Date

These rules are effective August 1, 1997. Except for jury plans, speedy trial plans and criminal justice plans for each district, these rules supersede all previous local rules and court orders.